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Sexual Orientation and Gender Identity Rights Lost in Translation?

Analyzing the UN Member State Disputes on International Human Rights Recognition for Sexual and Gender Minorities

ABSTRACT

Since 2003, the United Nations international human rights framework has moved notably toward increased international human rights recognition for sexual and gender minorities. Most recently, 2016 saw the adoption of an Independent Expert on violence and discrimination based on sexual orientation and gender identity. Motivated by the nevertheless continued refusal by predominantly African and Middle Eastern countries to recognize any such human rights application, as well as postcolonial critiques of counterproductive moral imperialism and homonationalist strategies by proponent member States, this article asks how dynamics of member State disputes in the UN debates on SOGI-based rights may point to restraints and possibilities for achieving global human rights recognition for culturally diverse sexual and gender minorities. The article demonstrates how inter- and intradiscursive rules of formation in UN member State debates predicated on either universal or culturally relative readings of international human rights law reproduce normative polarization and obstruct national implementation of human rights protection for sexual and gender minorities. The article therefore finds universality truth claims to restrain transformative change, as well as represent a possibility for achieving human rights recognition through “perverse,” reiterations of the parameters of the universal, wielded from an open-ended multiplicity of sexual and gender minority expressions and articulations. A radical politics of top-down and bottom-up cultural translation is suggested as a possible strategy for human rights recognition for culturally diverse sexual and gender minorities.

Keywords: truth regimes, SOGI, human rights, universality, cultural relativism, postcolonialism

JUNE 30, 2016 marked the date of a seminal vote at the UN Human Rights Council (UNHRC) in the history of international human rights recognition for sexual and gender minorities. The adopted resolution 32/2 appointed an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (SOGI). The institutionalization of human rights recognition for sexual and gender minorities thus reached an unprecedented peak, since sexual and gender minority rights were first considered by a UN member State body in 2003 upon the presentation of the “Brazilian Resolution” on “Human Rights and Sexual Orientation” to the UN Commission on Human Rights (UNCHR) (UNCHR 2003a; 2003b; 2003c; D’Amico 2015, 59; Picq and Thiel 2015, 2). Suddenly, a UN body, independent from individual member State and civil society advocacy, was given the mandate to carry out thematic and country-specific work on the issue of SOGI-based violence and discrimination, including the transmission of urgent appeals or letters of allegation to human rights violating States, carry out fact-finding country visits and draft annual reports to the UNHRC and the UN General Assembly (UNGA) (UNHRC 2016, 2; OHCHR 2018). The adoption of UNHRC resolution 32/2 was therefore unsurprisingly deemed a “historic victory,” “truly momentous,” and “the dawn of a new day” by global LGBT+ organizations (ILGA 2016; OutRight Action International 2016).

What might be considered by many a sensitive issue on the world stage has a comparatively short history prior to the 2003 Brazilian Resolution and was until the early 1990s not articulated as “rights,” rather in terms of “liberation,” “equality,” and “justice” by the Western 1960s and 1970s gay liberation movements (Kollman and Waites 2009, 2; Altman and Symons 2016, 56). Although the vote on the Brazilian Resolution was deferred due to protests questioning its legitimacy (ILGA 2009; Altman and Symons 2016, 84) the issue has since been put on the UN member State agenda a number of times. In 2008, one third of the member States at the UNGA signed an Argentinian sponsored non-binding

“Declaration on Human Rights, Sexual Orientation and Gender Identity” (UNGA 2008a; Akanji and Epprecht 2013, 27) calling “upon all States and relevant international human rights mechanisms to commit to promote and protect the human rights of all persons, regardless of sexual orientation or gender identity” (UNGA 2008a, 4). In 2011, UN Human Rights Council (UNHRC) resolution 17/19 “Human Rights, Sexual Orientation and Gender Identity” was adopted, mandating the United Nations High Commissioner for Human Rights to commission a study, documenting SOGI-based discrimination and violence around the world (UNHRC 2011, 1), the results of which were discussed during a UNHRC panel in 2012 (UNHRC 2012). Subsequently, a mandate to update said report was established in 2014 by the adoption of UNHRC resolution 27/32. Finally, UNHRC resolution 32/2 was adopted in 2016, and even withstood attempts by the African Group to defer consideration of the resolution at a subsequent vote at the UNGA Third Committee on November 4, 2016 (UNGA Third Committee 2016).

In spite of these victories for member State proponents of international human rights recognition for sexual and gender minorities, the votes have been accompanied by opposition, predominantly from Middle Eastern and African member States, refusing to acknowledge, consider or take action on adopted resolutions. This is evident, in itself, from a number of joint counterstatements, Aide Memoire’s and draft resolutions (*The Gully* 2003; UNGA 2008a; 2016b), for example a Syrian sponsored counterstatement to the 2008 Argentinian declaration, signed by fifty seven countries from mainly Asia-Pacific and African Groups, expressing concern for introducing SOGI-based rights to the UN (UNGA 2008a). As such, the immediate institutionalization of human rights recognition for sexual and gender minorities seem to be surrounded by notable clashes of interests.

The article therefore sets out to answer how dynamics of member State disputes in the UN debates on SOGI-based rights may point to restraints and possibilities for achieving global human rights recognition for culturally diverse sexual and gender minorities. In order to theoretically frame how we might understand the member State disputes

surrounding the institutionalization of human rights recognition for sexual and gender minorities, the article first presents an interpretation of international human rights as a Foucauldian truth regime with potential contesting truth claims. This in turn makes it possible to enquire into the nature of such disputes by analyzing the discourse formations of proponent and opponent statements on SOGI rights. The final section then discusses how the demonstrated oppositional truth claims of universal and culturally relative human rights application are nestled in existing competing knowledges in the international human rights truth regime and on that basis discusses the limits and potential of universalities for achieving human rights recognition for culturally diverse sexual and gender minority articulations and expressions. In providing recommendations for future action, the article thus takes into consideration the growing and important postcolonial literature (Massad 2007; Puar 2007; 2013; Rahman 2014) that point to potential stigmatizing and polarizing effects of moral imperialism through (predominantly Western) universal rights frameworks. Finally, the article argues that universality truth claims both restrain and represent a possibility for achieving human rights recognition through “perverse” reiteration of the parameters of the universal, wielded from an open-ended multiplicity of sexual and gender minority expressions and articulations. A radical politics of top-down and bottom-up cultural translation is suggested as a possible strategy for radical transformation.

SOGI Rights in the International Human Rights Truth Regime

In order to grasp theoretically the disputes surrounding the UN member State deliberations on sexual and gender minority rights, international human rights are in the following considered as a Foucaultian *truth regime*.

In brief, a truth regime works by distinguishing true statements from false and by producing standards of “normal” and “abnormal” (Keeley 1990, 92; Foucault 1995, 27; 2000, 131; Otto 1999 39; Weir 2008, 368). As stated by Michel Foucault (2000), it does so through circular systems of power and knowledge:

“Truth” is linked in a circular relation with systems of power that produce and sustain it, and to effects of power which it induces and which extend it – a “regime” of truth. (Foucault 2000, 132)

According to Foucault (2000, 132), each society has its own regime of truth, understood as a general politics of truth. It works to produce and circulate certain scientific statements, which “it accepts and makes function as true” (Foucault 2000, 131). A hegemonic truth regime therefore assesses, “not only whether statements are true or false but also whether they have a meaning at all or are mere nonsense” (Keeley 1990, 91).

When we try to apply the concept of truth regimes to the study of international human rights, Dianne Otto (1999, 41) illustratively echoes a Foucaultian formulation of truth regimes, by arguing that “[h]uman rights law has developed within the framework of international law which categorizes, compares, ranks and assesses the different claims to Truth by States.” However, while a truth regime can be hegemonic by supporting dominating forms of power and knowledge it can also act as a site of struggle between rival and disputing knowledges (Otto 1999, 38). This forwards a view of international human rights as “the outcome of a political struggle aimed at achieving moral legitimacy” (Evans 2001, 14), where “moral claims are closely linked to processes associated with the legitimation of interests” (Evans 2001, 17). As such, the institutional framework surrounding human rights at the UN, not only relies on national implementation, but also makes up a normative standard that member States to varying degrees seek to live up to (Donnelly 2014, 467).

Of particular importance, James F. Keeley (1990), points to the inherent instability and contest to define multiple truth regimes at the international level. He argues that when it comes to international truth regimes, we need to understand that they may consist of rival knowledges that a potential hegemonic discourse “may be unable to absorb or obliterate” (Keeley 1990, 93). Therefore, we might expect to see different strategies among the proponent and opponent statements, including developing alternative analysis, using the opponent member

State's discourse against their holders, and labeling of themselves and the other (Keeley 1990, 97).

The following therefore analyzes the UN SOGI-debates from 2003–2016^t using the Foucaultian discourse analysis as presented in *The Archaeology of Knowledge and the Discourse on Language* (1972) in order to identify contesting discourse formations. These discourse formations are seen as constitutive of the human rights truth regime as a disputed *object of knowledge* by making out the rules of formation, that is, conditions for a statement's existence in a certain discourse (Fairclough 1992, 40; Andersen 2003, 8) identified by the regularity and dispersion of corresponding statements (Foucault 1972, 38). In the following, corresponding statements are therefore identified in terms of how they constitute objects, subject positions, conceptual networks, and strategic choices (Andersen 2003, 11–3). As will be pointed out following the analysis, this endeavor not only provides a deeper understanding of the point of dispute on sexual and gender minority rights but might also deepen our understanding of how these disputing knowledges are potentially nestled in general disputing knowledges in the international human rights truth regime.

Analyzing UN Member State Disputes on SOGI-Based Rights

According to Foucault (1972), it is possible to detect a certain internal hierarchy or interrelationship between the dispersed and regular articulations of objects, subject positions, conceptual networks and strategies, that make up the proponent discourse formation (Andersen 2003, 11–3). Analyzing the proponent and opponent discourse formations thus render visible a vertical system of intradiscursive dependencies, that is, a certain level of coherence internal to the discourse that reinforces a limited autonomy between the articulation of concepts, objects, subjects, and strategies (Foucault 1972, 73). This might be seen to make up, what Foucault (1972, 38) calls the rules of formation, which is the conditions for a statement's existence in the proponent or opponent discourse on SOGI-based rights. As such, the articulation of a strategic choice is seen as conditioned by this interrelationship, being *one* thematic or theoretic-

cal choice articulated by the UN member States among a wider field of possible constellations (Foucault 1972, 64). I would argue, that by analyzing the discourse formations of the proponent and opponent States, such a vertical system of intradiscursive dependencies might be seen to stem from the particular re-actualizations of human rights law. As such, the dispersed and regular articulation of *concepts*, that is, the intertextual links that re-actualize key human rights “texts,” such as The Universal Declaration of Human Rights (UDHR) and the Vienna Declaration and Plan of Action (VDPA) are central in trying to understand the rules of the proponent and opponent discourse formation.

Through dispersed and regular reiterations of international human rights law by the proponent member States, human rights treaties, declarations, and covenants are intertextually adapted, read and interpreted (Foucault 1972, 98) as strong justifications of universality. By means of universality truth claims, “facts and knowledge are drawn from one text to another” (Hansen 2006, 51), in order to make possible the constitution of international human rights as applicable to violations and discrimination against sexual and gender minorities. Mexico thus phrases it as follows: “International human rights laws establish legal obligations on States to ensure that every person without distinction of any kind can enjoy these rights.” (ARC International and ILGA 2016, 44) This is echoed by the fellow proponents of the Latin American initiatives, such as in the statement by the United Kingdom in 2016:

Everybody is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind. Those are the words in the declaration – *without distinction of any kind*. (ARC International and ILGA 2016, 80)

As such, by reiterating international human rights law as a strong justification of universality, human rights as an object of knowledge is articulated as already holding the legal basis for addressing human rights violations committed against sexual and gender minorities. The summary record of the Brazilian statement on the Brazilian Resolution

thus illustratively states: “The aim was not to create any new right. The draft resolution was strictly based on existing multilateral instruments.” (UNCHR 2003b, 12) Similarly, the Argentinian sponsored declaration from 2008 states:

We reaffirm the principle of non-discrimination, which requires that human rights be equally applied to all human beings regardless of their sexual orientation or gender identity. (UNGA 2008a, 30)

As such, the conceptual re-actualization of international human rights law as a strong justification of its universality constitutes SOGI-based rights as a human right, as its application to sexual and gender minorities only serve to provide its originally intended universal protection.

Similarly, articulations of the subject positions of international human rights might be seen to follow the conceptual re-actualizations of international human rights law as “universal,” articulating sexual and gender minorities as *already* legitimate subjects of international human rights protection. Subject positions thus make up the spaces that can and must be occupied by an individual in order to be a subject of human rights law (Foucault 1972, 54; Andersen 2003, 11), and are by proponent statements seen to include sexual and gender minorities. The Norwegian UNGA Plenary statement in 2016 illustrates this:

We have committed ourselves to ensuring that all people are entitled to and granted the same set of rights, irrespective of gender, race, religious and political background or, indeed, sexual orientation and gender identity. (UNGA 2016a, 21)

The proponent statements thus articulate “universality” as a superior Truth in international human rights texts in order to emphasize that legal protection for sexual and gender minorities cannot be given second priority to considerations of religious beliefs, sovereignty, national legislation or cultural values. As such, the articulation of intertextual links to international human rights law not only re-actualizes a strong

justification of universality, but also stresses that cultural specificities of the individual member States cannot be acknowledged as legitimate qualifiers in their protection of sexual and gender minorities. As a result, the universal application of human rights law is conceptually articulated as superior to other considerations, such as the sovereignty of States and their religious, cultural, and legal particularities. In the 2003 Brazilian Resolution, this is expressed rather modestly, showing “no intention to take issue with any religious principle or cultural value [but at the same time stressing] the duty of States to promote and protect all human rights” (UNCHR 2003b, 12). In 2016, however, the stance is explicitly clarified, expressed illustratively by the Netherlands in the re-actualization of the Vienna Declaration and Plan of Action (VDPA):

As we have explained before, since the VDPA it is very clear that the universality trumps particularities, and sovereignty and national legislation have to be tested against international obligations. (ARC International and ILGA 2016, 56)

As such, the room for maneuver of States to refrain from providing human rights protection for sexual and gender minorities is, as the representative of the Netherlands puts it, “limited” (ARC International and ILGA 2016, 41). Similarly, Mexico stresses that member States “should not hide themselves under the sovereignty, national law, development priorities or religious and ethical values in order not to respect human rights” (ARC International and ILGA 2016, 54–5).

This leaves the UN human rights mechanisms with an *extended* international mandate and responsibility to ensure universal human rights protection for sexual and gender minorities, exemplified by the Brazilian statement in 2003:

It was time for the international community to face and tackle the fact that the underlying cause of human rights violations committed throughout the world was often the victims’ sexual orientation. (UNCHR 2003b, 12)

As such, the need for the international community to ensure international human rights protection for sexual and gender minorities makes up the proponent strategy, that is, the thematic or theoretical choice of the proponent discourse formation. This theoretical conviction of international obligation to address the victimized sexual and gender minorities is brought to the ultimate test in 2016 when an actual Independent Expert within the UNHRC Special Procedures is proposed and adopted. The statement made by Mexico on behalf of the sponsors of resolution 32/2 thus states:

We are convinced that the scale and gravity and widespread nature of this type of violence and discrimination requires a specific response from the Council through a specialized mechanism. (ARC International and ILGA 2016, 8)

A certain vertical system of intradiscursive dependency in the proponent discourse formation on international human rights recognition for sexual and gender minorities thus stems from the particular conceptual interpretation of international human rights law that provides the discursive space necessary for recognizing SOGI-based rights as human rights, sexual and gender minorities as entitled subjects to human rights protection and a resulting strategic choice of full, universal human rights enjoyment for sexual and gender minorities and an international obligation to ensure its implementation by member States.

Moving on to the opponent statements, we see a similar vertical system of intradiscursive dependencies stemming from particular conceptual interpretations of international human rights law as leaving out consideration of sexual and gender minorities and thus securing a universal right to cultural variation in national human rights implementation. As such, international human rights law is said to reaffirm “the dignity and worth of the human person and in the equal rights of men and women, without distinction” (UNGA 2016a, 8) while at the same time staying sensitive to principles of particularity and cultural differences. Botswana thus stresses on behalf of the African Group in the Third Committee the need:

[to] preserve the respect for the principles of international law and the Charter of the United Nations and the universally accepted principles of respect for the independence and sovereignty of all member States. (UNGA Third Committee 2016)

The opponent statements thus reiterate a culturally relative reading of international human rights law by stating the fundamental need to be mindful of differences between States and respect the national, religious, and cultural particularities, as well as the sovereignty of States in considering such new human rights issues (UNGA 2008a, 31). Saudi Arabia states in response to draft resolution 32/2:

That's why the draft resolution on the table doesn't reflect the respect of the Council to the different cultures and religions and runs counter to the provisions of the international human rights declaration and international instruments to respect the different cultures. However, it imposes on us a specific notion that might be human rights based on one part, but runs counter to religions on the other part. (ARC International and ILGA 2016, 22)

Presenting new rights that are understood to run counter to religious and cultural values of some States, therefore run the risk of moral imperialism. Botswana significantly states on behalf of the African Group in the Third Committee: "No nation or group of nations should pretend to hold monopoly over cultural norms and therefore seek to impose those values on others." (UNGA Third Committee 2016)

On the basis of this culturally relative reading of international human rights law, the opponent statements dispute the proponent "no-new-rights"-rhetoric by pointing out that SOGI-based rights are not mentioned in any human rights mechanism such as the UDHR, VDPA and the Charter of the United Nations and as such are not an object of human rights. The inclusion of SOGI is therefore seen as a direct *misinterpretation* of international human rights law, as the 2008 UNGA counterstatement declares:

We note with concern the attempt to create new rights or new standards by misinterpreting the Universal Declaration and international treaties to include such notions that were never articulated nor agreed by the general membership. (UNGA 2008a, 31)

As such, human rights, as an object of knowledge, are articulated as a consensual legal framework, by stressing the need “to maintain joint ownership of the international human rights agenda and to consider human rights issues in an objective and non-confrontational manner” (ARC International and ILGA 2016, 108). Consequently, SOGI-based rights, as a non-listed and non-consensual agenda item, are not qualified as a human rights issue. As explicitly stated by Pakistan on behalf of the Organization of Islamic Cooperation (OIC) in 2003: “After careful reflection, the member States of OIC had decided that the issue was not a proper subject for consideration by the Commission.” (UNCHR 2003b, 13)

Intertextual re-actualizations of international human rights law thus also provides the ground to argue, that in order to be considered a subject of human rights, one has to be listed among the internationally accepted instances of violation set forth in international human rights law. As such, the 2003 OIC Aide Memoire states that the human rights as enshrined in the UDHR and the two subsequent Covenants, “besides defining these rights and freedoms, also identified instances of violation of these rights and the basis of possible discriminations, i.e., race, colour, sex, language, religion, opinion, origin, status, etc.” (*The Gully* 2003). Therefore, all grounds for human rights violations have been identified, why human rights law already provide adequate protection for: “everyone on an equal footing without exception” (UNGA 2008a, 32).

As SOGI rights cannot be implied from their particular interpretation of international human rights law, the opponent statements express a strategy of no-action, that is, they argue that the international community should *refrain* from imposing such issues on the UN member States. This strategic choice is evident throughout the debates. Both in 2003 and during the UNHRC session in 2016 a no-action motion is

filed (and rejected by vote), and in the 2016 Third Committee session, the draft resolution in a similar fashion seeks to defer consideration of the issue. When this attempt proves unsuccessful, the reaction by all the opponent statements is to boycott or: “disassociate itself from the mandate of the Independent Expert established by resolution 32/2” (UNGA Third Committee 2016). In a similar fashion, the 2008 statement: “Call upon all Member States to refrain from attempting to give priority to the rights of certain individuals.” (UNGA 2008a, 32)

A vertical system of intradiscursive dependencies in the opponent discourse formation on human rights recognition for sexual and gender minorities thus stems from the particular culturally relative interpretation of international human rights law that considers the imposition of SOGI-based rights as moral imperialism at the expense of cultural particularities and national sovereignty, thus providing the discursive space necessary to refuse SOGI-based rights as a human right and sexual and gender minorities as entitled subjects to human rights protection. This internal hierarchy thus results in an opponent strategy of no-action.

Universality: Moral Imperialism and Perverse Reiterations

As earlier mentioned this analysis held the potential of not only rendering visible the points of dispute on this particular human rights issue, but also of highlighting the ways in which this debate might be nestled in existing rival and competing “knowledges” in the international human rights truth regime. In human rights literature and debates, such rival and disputing knowledges are often conceptualized in terms of a principled and normative battle between the “universality camp” and the “cultural relativity camp” (Donnelly 1984). Echoing this binary of human rights truth claims, the analysis similarly highlighted how the disputes between opponent and proponent discourse formations on sexual and gender minority rights revolve around opposing universal and culturally relative argumentative patterns and readings of international human rights law. One might therefore argue, that the two formations are not only constituted intradiscursively by their respective interpretations of international human rights law, but are additionally mutually

constituted *interdiscursively* through *opposing* interpretations of human rights law as either universal or culturally relative.

This follows Foucault's (1972, 66) notion, that each discourse formation is in an interdiscursive relation of analogy, opposition, complementarity or mutual delimitation with the discourses they are related to, which poses interdiscursive constraints on the choice of strategies. Contesting knowledges on the nature of human rights law therefore ultimately restrain human rights recognition for sexual and gender minorities through a dynamic of mutual constitution of opposing human rights law interpretations whereby interdiscursive polarization of strategies is reproduced. In order to be admitted into the human rights discourse by the rules of formation, the statements thus need to subscribe to an interpretation of human rights law as either universal *or* culturally relative. This poses a challenge in the attempt to move beyond the universality and cultural relativity binary, that too easily limits both the transformation of State positions on the issue, as well as the theoretical attempt to imagine a transformative and radical politics of international human rights recognition for sexual and gender minorities.

Bringing this into the context of existing international human rights disagreements, the demonstration of universality and culturally relative truth claims in the analysis echoes Otto (1999, 22) when she states: "[a] ferocious battle is being waged on the world stage over whether 'cultural relativity' should be a factor that qualifies the universal application of human rights norms." As such, we are witnessing "a paralysing polarisation between the binary camps of universality and cultural relativity," born out of a "contest between alternative assertions of universal truth and not a questioning or rejection of the utility of universals" (Otto 1999, 23). So what good can we expect from universals, if they only inspire a further polarization of human rights strategies for sexual and gender minorities?

Following Jack Donnelly (1984, 400–1), the different statements in UN debates can be placed on a continuum, depending on the enunciation of cultural variation allowed, between on the one hand, a radical universalism that finds culture irrelevant to universally valid moral val-

ues and rules and a radical cultural relativism that finds culture to be the only source of validity. Consequently, we see proponent statements using justifications of strong universalism that run into implications of moral imperialism, by disregarding cultural diversity as phrased by the opponent States themselves (Donnelly 1984, 402). This is what postcolonial critiques of SOGI rights call “homonationalism” or the universalization of human rights for sexual and gender minorities as a “marker of Western modernity,” that only leads to further polarization setting back sexual freedoms (Massad 2007; Puar 2007; 2013; Rahman 2014; Bosia 2015). SOGI-based rights thus run the risk of turning into moral imperialism by disregarding how sexual and gender norms and expressions might be culturally different from Western cultures. On the other hand, seeing human rights as culturally variable, it remains a moral issue, what can be done to human beings, such as sexual and gender minorities, in the name of cultural relativism (Donnelly 1984, 404). Are we thus facing the discarding of universal human rights frameworks for sexual and gender minorities altogether or might we be able to imagine new ways of thinking universal rights frameworks, that do not fall into the trap of stigmatizing and polarizing moral imperialism?

According to Judith Butler (2000b), universals do not necessarily restrict the possibility of transformative change for the recognition of SOGI-based rights. On the contrary, human rights might be turned into transformative ends by repeating the principle of universality in “perverse” ways, such as advocating for its application on sexual and gender minorities. She argues: “The established discourse remains established only by being perpetually re-established, so it risks itself in the very repetition it requires.” (Butler 2000b, 41) This need for international human rights law to be reiterated, as we see it in the proponent and opponent re-actualizations of international human rights law, creates a space for “perverse reiterations” by producing unconventional formulations of universality (Butler 2000b, 40).

Thus, the reiteration of human rights law “offers the possibility – though not the necessity – of depriving the past of the established discourse of its exclusive control over defining the parameters of the

universal within politics” (Butler 2000b, 41). Following Butler’s line of argument, turning human rights law into transformative ends through universality truth claims becomes possible if the proponent UN member States are able to redefine the parameters of universality, by engaging in a transformative rhetoric that does not seek to align SOGI-based rights as ultimately similar to other human rights. There is therefore a need to re-imagine SOGI-based rights outside the rhetoric of “no new rights” currently articulated by the proponent States and thereby outside the hegemonic signification of what is means for human rights to be “universal.”

Contrary to this, Dennis Altman and Jonathan Symons (2016) argue that universals are counterproductive due to the fact that the universalization of SOGI-based rights in itself comes off as polarizing moral imperialism in its ignorance of cultural variation. “Promoting radical ideas or even too much visibility in communities where sexuality is not conceived as a legitimate identity may provoke a backlash that sets back sexual freedom.” (Altman and Symons 2016, 104) They argue: “Lasting social progress can ultimately only emerge from within societies.” (Altman and Symons 2016, 95) Proving the extension of sexual and gender rights on a global scale is thus counterproductive. As such, the positive effect of an Independent Expert is questionable if the African and Middle Eastern countries will not cooperate with the Expert, at the expense of the credibility of their discourse of human rights compliance – they will continue to reiterate cultural relativistic re-actualizations of international human rights law. What seems to be the task is therefore to acknowledge culturally specific sexual and gender expressions, in order to avoid backlashes such as the wave of African anti-gay laws in 2014 (Altman and Symons 2016, 75).

This echoes the postcolonial critiques by Joseph Massad (2007) arguing that by producing “gayness” in the Western sense, where it did not exist before, simultaneously produces its own discursive opposition:

While subjectivities in many non-Western contexts do not include heterosexuality and exclude homosexuality, as that very binarism is not part of their ontological structure, what the incitement and intervention

of international human rights activism achieves is the replication of the very Euro-American human subjectivity its advocates challenge at home. (Massad 2007, 41)

Therefore: “The Gay International’s fight is [...] a simple political struggle that divides the world into those who support and those who oppose ‘gay rights.’” (Massad 2007, 174). Up until the point when the extension of international human rights recognition is being built upon the local ontological structures of the individual member State’s sexual and gender minority subjectivities, SOGI-based rights cannot become a human right with productive results, as it is received by non-Western countries as moral imperialism and might create unwanted visibility among the local sexual and gender minorities. It thus reproduces the demonstrated binary rules of universal and culturally relative formations that sort out statements that do not subscribe to this dynamic and thereby keep consolidation at an arm’s length. “Up until that point, controversial human rights claims are like agenda items that have been marked for discussion, but not for action.” (Altman and Symons 2016, 98)

Butler, however, does not abandon the possibility and potential of international rights for sexual and gender minorities in response to accusations of imperialism and imposition (Birdal 2015, 133). She argues that SOGI rights *can* redefine the definition of human rights in different cultural contexts by way of cultural *translations* and thereby have universalizing effects without imperialist logics (Butler 2000a, 169; 2000b, 35). A politics of cultural translation is thus understood as a discursive practice in which the dominant discourse includes the vocabulary of multiple universalisms, and wield a unity able to sustain but not domesticate these internal differences, in order to compose such differences as the very foundational fabric of universality (Butler 2000a, 168–9). The task is therefore one of re-imagining the way universality and human rights are enunciated by “admitting the ‘foreign’ vocabulary into its lexicon” (Butler 2000a, 168–9). It thus seems like Butler is calling for the univocal rhetoric of universality to be replaced by a proliferation and composite re-imagining of what it means for hu-

man rights to be “universal” by admitting a multiplicity of culturally diverse sexual and gender minority subjectivities into the vocabulary of universal human rights.

Conclusion: A Radical Politics of Human Rights

On that note, I would propose that in order to move beyond polarizing dynamics of oppositional strategies of universal versus culturally relative human rights application, we need an increased focus on, not only top-down, but also bottom-up translations, that is to say, to continuously explore the possibilities of re-imagining human rights through the bottom-up vocabularies of local sexual and gender minority activists. This echoes Anthony T. Chase’s (2016, 716) argument, that in order to imagine changes in otherwise polarized human rights landscapes one will have to practice top-down sensitivity to bottom-up impulses.

We thus need to move toward a future international human rights truth regime, that does not domesticate cultural differences at the expense of non-Western articulations of sexual and gender minority subjectivities, but wield and sustain a vocabulary of human rights subjectivities that mirror local configurations of kinship, as well as social, gendered, and sexual differentiations and configurations. Local activists thus has an important role of celebrating and communicating their cultural configurations and gender and sexual minority subjectivities; a cultural translation into the realm of international human rights mechanisms and interstate deliberation that sustains cultural specificities and refrains from mirroring Western subjectivities such as “LGBT+” where it does not represent the particular sexual and gendered experiences. On the other hand, global LGBT+ organizations, member State politicians and UN representatives, not least the Independent Expert, needs to practice a top-down sensibility to these bottom-up impulses, and let the particular needs and demands of sexual and gender minorities from different cultures, sexual and gender expressions, articulations, and practices be reflected in the human rights vocabulary used by the proponent member States. That is to say, an act of top-down sensitivity, that works to sustain cultural specificities in its organizational and

political translations. This provides a venue for “perverse reiterations,” which not only changes the parameters of universality, but also does so in the service of global sexual and gender diversity. As Otto (1997, 46) aptly puts it, there is a need for *cultural diversity* rather than cultural relativity, which requires “disrupting the dualized terms of the debate [...] to create a politics out of multiple difference.”

Though it may seem like an ambitious and tiresome process of achieving human rights recognition, the size of the challenge does reflect the current normative gap between the two universal truths in the international human rights regime. Echoing Paul Gready’s (2003) response to the pessimism prevalent in the political field of human rights, one needs to keep in mind:

the immense value of moral horizons to struggles for political and social justice throughout history. The tension between ideals and realities is not only a source of despair; it is also a source of inspiration, an agent of mobilization, an agenda for action. (Gready 2003, 746)

By recognizing sexual and gender diversity as a global, even universal, phenomena in and through its endless multiplicity and cultural diversity, we are one step closer to an international human rights agenda for sexual and gender minorities that is not morally imposed from the West, but elevated from local activist vocabularies, maybe even holding the potential of pushing for future sponsorship of sexual and gender minority rights at the UN among the current oppositional member States.

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NOTE

1. In analyzing the UN member State debates on SOGI rights from 2003 to 2016 draft resolutions, explanatory notes and meeting records were included in the data material. The data and the scope of analysis are, due to the aim of the paper, limited to UN member State bodies, and thus do not include UN expert bodies such as the Human Rights Committee. References and quotes in the analysis do not include the entire analyzed data material and are therefore listed here: African Group (2016), ARC International and ILGA (2016), Latin American Countries 8 (2016), *The Gully* (2003), UNCHR (2003a; 2003b; 2003c), UNGA (2008a; 2008b; 2016a; 2016b), UNGA Third Committee (2016), and UNHRC (2012).

SAMMENFATNING

Siden 2003 har rammen for de Forenede Nationers internationale menneskerettigheder bevæget sig markant mod øget menneskerettighedsanerkendelse af seksuelle og kønsminoriteter. Senest blev en ”Independent Expert on violence and discrimination based on sexual orientation and gender identity” vedtaget i 2016. Motiveret af at hovedsageligt mellemøstlige og afrikanske lande fortsat nægter at anerkende en sådan anvendelse af menneskerettighederne, samt postkolonial kritik af fortalende medlemsstaters kontraproduktive moralske imperialism og homonationalistiske strategier, søger denne artikel at afdække, hvordan konfliktende dynamikker medlemsstaterne imellem under FN-debatter vedrørende SOGI-baserede rettigheder om muligt kan pege på begrænsninger og muligheder for at opnå global menneskerettighedsanerkendelse for kulturelt mangfoldige seksuelle og kønsminoriteter. Artiklen demonstrerer, hvordan inter- og intradiskursive ”rules of formation” i FN’s medlemsstatsdebatter, fundet på enten universalistiske eller kulturelt relativistiske læsninger af international menneskerettighedslov, reproducerer normativ polarisering og lægger hindringer for national implementering af menneskerettighedsbeskyttelse for seksuelle og kønsminoriteter. Artiklen finder derfor, at universalitetspåstande

både hindrer transformativ forandring, og samtidig kan udgøre en mulig indgang til at opnå menneskerettighedsanerkendelse gennem ”perverse” gentagelser af universalismens grænser, funderet på en kulturel mangfoldighed af seksuelle og kønsminoriteters udtryk og artikulationer. En radikal politik foreslås som en mulig strategi for menneskerettighedsanerkendelse for kulturelt mangfoldige seksuelle og kønsminoriteter, bestående i kulturelle oversættelser oppe-fra-og ned og neden-fra-og-op.